

## Standard Terms and Conditions of Engagement

These standard terms and conditions form part of the attached Agreement between Zaifod Industries Trading as Carbon Friendly Enterprises Pty Ltd, and will be referred to as CFE for the remainder of this Agreement, and the Client, with the client being the other party engaging the services of CFE. These standard terms and conditions of Agreement are deemed to be the basis of our mutual agreement in the supply of services on a temporary or permanent basis and will become effective upon engagement of CFE by way of Purchase Order, email or commencement date onsite to collect data, or which so ever shall come first. This agreement supersedes any previous terms and conditions.

### 1. Definitions and Interpretation

#### 1.1 Definitions

'Agreement' means the entire contractual agreement between the parties and includes these terms and conditions, any variation, this Proposal, and any other documents referred to in these terms and conditions. 'Background IP' means any Intellectual Property collated prepared or created by CFE outside of this Agreement whether before or after the Commencement Date. 'Commencement Date' means the date set out in the Proposal Information Schedule or if this is blank the date of execution of this Agreement. 'Contract Material' means all Intellectual Property created in the performance of the Services. 'GST' means a goods and services tax, a value added tax or similar tax levied or imposed in relation to a supply (or deemed supply) of any goods, property, services or other thing. 'Intellectual Property' means all present and future, Australian and foreign intellectual and industrial property rights conferred by statute, at common law or in equity wherever those rights might arise, including (without limitation) copyright, patent rights, patent applications, designs, technical or commercial know how, trademarks, circuit layouts, rights in relation to inventions, and all other results of intellectual effort in the scientific, industrial, literary or artistic fields whether or not registered or capable of registration. 'Reimbursable Expenses' means all other costs and expenses incurred by CFE which will be reimbursed by the Client and as set out in related invoices. 'Services' means the services required by the Client as set out in this Agreement, Audit and or other documents. 'Term' means, at any time, the initial Term specified in clause 3.1 and any renewal of the Term pursuant to clause 3.2 effective at that time. 'Completion Date' means the date set out in this Agreement or within two years from the Commencement Date. 'Variation Notice' means a written notice issued by either party which requests a change to the scope or fee for the Services.

#### 1.2 Interpretation: In this Agreement:

- The singular includes the plural. Words of any gender include the other gender.
- A reference to a person includes a firm or body corporate as well as a natural person.
- References to a party include the permitted assignees and novatees of that party's rights or obligations under this Agreement.
- The clause headings are for convenience only and are not to affect the Agreement's interpretation.

### 2. Provision of Services

2.1 Standard of Care: CFE agrees to provide the Services with the degree of care, skill and diligence normally exercised by a suitably qualified professional experienced in performing services of a similar nature and complexity as the Services.

2.2 Any assumptions, analysis and recommendations made by CFE during or in connection with this Agreement apply specifically to the Client's circumstances, operational or business practices at the time of the Services.

2.3 Services include but are not limited to Preliminary Site Visits, Billing Data Investigation, Consultation, request for information, tariff renegotiation, Auditing, Engineering, Design, Supply of Equipment, Installation, Commissioning, Hand over and Sign Off

### 3. Term

3.1 This Agreement shall commence on the Engagement of CFE Services and ends on the Completion Date and or any extended date for completion pursuant to clauses herein.

3.2 Upon expiry of the initial Term or any subsequent extension to the Term under this clause, this Agreement will be automatically extended for successive periods of one year, each on the same terms, unless either party gives the other party 45 days written notice of their wish to terminate the Agreement prior to the expiry of the initial Term or any subsequent extension of the Term.

3.3 In the event that notice is given pursuant to clause 3.2 then the Agreement will terminate at the end of the then current Term.

### 4. Variations:

4.1 Variations Process: If either party reasonably believes that a change to 6.

Services is required then they may issue a Variation Notice or similar documentation or variation invoice setting out the new scope for Services. If the Variation Notice is issued by the Client then CFE will have 7 days to notify the Client of any change in Fee due to the Variation Notice, other relevant documentation or Variation Invoice. If the Variation Notice is issued by CFE it will include any new Fee and the Client will have 7 days to accept the variation.

4.2 Variations to Scope: The agreed Fee for Services has been calculated on the assumption that the Services are to be carried out under circumstances normally pertaining to the carrying out of the type of project in question. If CFE is required to carry out the Services in circumstances other than that normally pertaining to such a project or if by reason of a Variation Notice there is a change to scope, timing or order of the Services, then the amount payable to CFE hereunder shall be increased or decreased (as the case requires) by such amount as is reasonable in the circumstances.

4.3 Variations to Laws: If after the date of this Agreement there are any changes to the laws, bylaws, regulations or ordinances of the Commonwealth of Australia or a State or Territory of Australia or any statutory authority, and that change directly or indirectly increases or decreases the costs or expenses incurred by CFE in performing the Services then the Fee and Reimbursable Expenses shall be increased or decreased (as the case requires) by an amount reasonable in the circumstances.

### 5. Payment Fees:

5.1 The Client will pay to the Consultant (Carbon Friendly Enterprises) the agreed fee for the performance of the Services, design and or supply of equipment plus related disbursements. If no fee or basis for calculating the fee has been agreed, then Carbon Friendly Enterprises is entitled to be paid a reasonable fee taking into consideration Carbon Friendly Enterprises Schedule of Hourly Rates, By Category, For Fees on a Time Basis, current at the time the Services are performed, a copy of which shall be provided by the Consultant to the Client upon request.

5.2 In the event that CFE enters into a service agreement for an energy Audit agreement based on the condition that if the Client is to follow through with any of the proposed works or audit recommendations that CFE has proposed CFE has the exclusive right to perform these works and be reimbursed as set out in the quotations provided for these works and that CFE is to remain competitive and ensure value for money for the client in all pricing of works for the client and will forgo hourly billing as in this instance.

5.3 In the event that CFE has agreed to waive the Audit fee, consultant time costs, engineering costs, project management costs and Load Profiling fees, and instead agrees to invest this value into the Client's business then the Client has agreed to issue CFE with the exclusive right to execute any works identified in the Audit, and provided to the client including but not limited to any scopes of works, quotations, budget estimates and or technical data that has been provided by CFE.

5.4 If the client chooses to execute these proposed works in any of their places of business Australia wide; and if the Client themselves performs these works without the expressed notarised consent of CFE, or engages another party to carry out the works mentioned in the audit report, CFE scope of works, CFE provided Intellectual property, ideas and proposals then the Client is to pay CFE the Reimbursable Expenses, original audit fee, Loss of Income and Damages for all proposed works including but not limited to scopes of works set out in the Audit Report, quotations and Budget Information Schedule and as such the Client shall be bound and prevented from doing so for a period of five years after the agreement date or commencement of services onsite of engagement of CFE personnel, or whichever date comes first.

5.5 Payment Terms: CFE may invoice for Fees and Reimbursable Expenses on a fortnightly basis. The Client agrees to pay all invoices within 14 days of date of invoice date.

5.6 Set-off: Both parties will be entitled to set off any amounts due and within 30 days of the date of the breach notice.

5.7 Increase to Fees: CFE may increase its Fees on the yearly anniversary of the Commencement Date by 5% or the Australian Consumer Price Index whichever is the highest.

### 6. Indemnity:

6.1 CFE agrees to indemnify and keep indemnified the Client against all liability for and in respect of personal injury or death to persons or damage



professional negligence arising directly out of any negligent act or omission of CFE in the provision of the Services.

6.2 CFE liability to indemnify the Client shall be reduced where caused by the Client or a negligent or wrongful act or omission of the Clients or its employee's or agents.

6.3 Each Party agrees to indemnify the other party from and against any third party claims, demands, loss, damage or expense relating to bodily injury or death of any person or damage to real and/or tangible personal property directly caused by the negligence or wilful misconduct of the indemnifying party, its personnel or agents in connection with the performance of the Services under this Agreement.

#### 7. Limitations

7.1 Notwithstanding any provision of this Agreement, CFEs' maximum aggregate liability to the Client arising out of or in connection with this Agreement (whether in contract, tort, indemnity, breach of contract or to any other party unless obliged to by law, or if the confidential information is already in the public domain.

7.2 Neither party is liable to the other party in any circumstance for any indirect, economic, special or consequential loss or damage, including but not limited to loss of revenue, loss of production or loss of profit.

#### 8. Insurance

8.1 CFE agrees to effect and keep current all insurances to the limits pertaining the services outlined in the Proposal and Information Schedule.

8.2 CFE agrees to provide to the Client certificates of currency for all insurance policies required under this Agreement as proof of insurance upon request.

#### 9. Intellectual Property

##### 9.1 Contract Material

(a) All Contract Material and documentation will be solely owned by CFE.  
(b) To the extent possible at law, CFE will not be liable for any third party reliance upon the Contract Material created in the performance of the Services under this Agreement.

##### 9.2 Background IP

(a) All intellectual property rights in CFE Background IP will always remain with CFE.  
(b) CFE grants the Client a royalty free, non-exclusive, revocable, non-transferable license to their Background IP for the sole purpose of and only to the extent necessary to utilize the Contract Materials.  
(c) All intellectual property rights to any modifications to CFE Background IP, which may be made from time to time, shall always remain with CFE.  
(d) Any extract from the Contract Material, which contains descriptions of CFE Background IP, which is published by the Client, must contain acknowledgement of CFE copyright; and any use or promotion of CFEs' Background IP must include acknowledgement of CFEs' copyright.  
(e) The Client, its employees, agents, subcontractors or representative may not use, or publish CFEs' logo or brand name in the public domain in association with the Services provided under this Agreement without the prior written consent of CFE.  
(f) CFE reserves the right to deny permission for any reason or impose conditions upon the use of its logo or brand name.

#### 10. Termination

10.1 Termination for convenience: Either party may terminate for convenience with two weeks written notice.

10.2 Termination for breach: Either party may terminate the Agreement immediately if the other party assigns any of its property for the benefit of creditors, becomes subject to any form of insolvency administration or commits a breach of this Agreement which has not been remedied proportionately to the extent that the losses, damages, costs, claims, liabilities or causes of action

10.3 Effect on termination: Upon termination CFE shall be entitled to a pro rata payment for the Services carried out up to the date of termination and any costs and expenses reasonably incurred as a result of termination.

#### 11. GST

11.1 Any consideration or amount payable under this Agreement, including, but not limited to, any Fees and non-monetary consideration, is exclusive of GST.

11.2 If this Agreement requires one party to pay for, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense.

11.3 Each party agrees to do all things, including providing invoices or other

documentation in such form and detail that may be necessary to enable or assist the other party to claim or verify any input tax credit, set off, rebate or refund in relation to any GST payable under this Agreement or in respect of any supply under this Agreement.

#### 12. Confidentiality

12.1 All information provided under this Agreement and as pertaining to any information supplied by CFE to the Client in any format including but not limited to emails, reports, estimates, audits, quotations or scopes of works, either electronic or hard copies thereof shall be treated as strictly confidential and in the event this information is disclosed to any third party without the authority and expressed notarised consent of CFE, then CFE will be entitled to claim damages that the client is to pay within 30 days of notification of a breach of confidentiality under this agreement and will be binding for a period of five years.

12.2 Neither party (including their employees, agents, subcontractors or representatives) shall without the consent of the other party disclose any confidential information under this Agreement

#### 13. Disputes

13.1 Dispute procedure: Unless a party has complied with this clause 13, that party may not commence court proceedings relating to any dispute, controversy or claim arising under this Agreement except where that party seeks urgent interlocutory relief or the other party has failed to comply with this clause 13.

13.2 Executive negotiation: If any dispute, controversy or claim in relation to this Agreement arises between the parties, then a senior representative from each party shall meet, within 10 days of the giving of a notice setting out the areas of dispute between the parties, and negotiate in good faith to resolve the controversy, dispute or claim.

13.3 Mediation: In the event that a dispute, controversy or claim is not resolved within 28 days of the giving of a notice under clause 13.2, the dispute, controversy or claim shall be submitted to mediation in accordance with the procedures set out by the Institute of Arbitrators and Mediators Australia.

13.4 Costs of mediation: The costs of mediation shall be shared equally between the parties (except that each party shall bear its own legal

#### General

14.1 Anti-poaching: For the term of this Agreement both parties agree not to directly or indirectly, contact, solicit or offer employment or engagement, or entice away on behalf of itself or any other person any of the other party's personnel. This clause will not prohibit employment where the employee has independently applied to an advertised offer of employment by a party.

14.2 Notices: A notice purported to be served under this Agreement shall be deemed to be properly served if the same is in writing and has been sent by either

(a) by registered mail to the usual business address of the recipient;  
(b) by personal delivery where a receipt is obtained; or  
(c) via email where a read receipt is obtained.

14.3 Assignment: Neither party may assign, sublet or transfer any right or obligation under this Agreement without the prior written consent of the other party.

14.4 Moneys: Unless otherwise stated all references to money in this Agreement shall be deemed to be references to Australian currency.

14.5 Governing Law: This Agreement is governed by the laws of Queensland, and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Queensland and any courts which have jurisdiction to hear appeals from any of those courts.

14.6 Amendments: The terms of this Agreement shall be final and shall not be amended or altered in any way other than by the written agreement of CFE and the Client

14.7 Entire agreement: The terms of this Agreement shall supersede all prior agreements, discussions, representations, written or verbal and shall govern the relationship between CFE and the Client.

14.8 Continuing Obligations: the terms contained in clauses 9 and 12 shall continue notwithstanding completion or termination of this Agreement.

Notice: All CFE documentation contains copyright confidential proprietary information and is not to be distributed to any third party. To do so will constitute a breach of confidentiality and result in damages to be paid as set by CFE.

